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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of December 15, 1971

BETWEEN

BURLINGTON EQUIPMENT COMPANY

AND

BURLINGTON NORTHERN INC.

AGREEMENT AND ASSIGNMENT

Dated as of December 15, 1971

BETWEEN

BURLINGTON EQUIPMENT COMPANY

AND

THE SAVINGS BANK OF BALTIMORE

[Covering 225 Hopper Cars]

CONDITIONAL SALE AGREEMENT dated as of December 15, 1971, between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Vendor or Builder, as more particularly set forth in Article 26 hereof), and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Railroad).

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. INCORPORATION OF MODEL PROVISIONS. Whenever this Agreement incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Conditional Sale Provisions" annexed to this Agreement as Part I of Annex A hereto (hereinafter called the Model CSA Provisions), such provision of the Model CSA Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this instrument.

ARTICLE 2. CONSTRUCTION AND SALE. Article 2 of the Model CSA Provisions is amended by substituting a new sentence for the last sentence thereof reading as follows:

"The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications for

new equipment and to all standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of such units of the Equipment, and each unit of the Equipment (except to the extent, if any, referred to in Article 8 hereof) will be new or remanufactured railroad equipment.”

ARTICLE 3. INSPECTION AND DELIVERY. Article 3 of the Model CSA Provisions is herein incorporated as Article 3 hereof.

ARTICLE 4. PURCHASE PRICE AND PAYMENT. The purchase price per unit of the Equipment, F. O. B. the Builder’s plant at which constructed, is set forth in Schedule B hereto. Such purchase price per unit is subject to increase or decrease in accordance with the Specifications, or as may be agreed to by the Railroad and the Builder. The term “Purchase Price” as used herein shall mean such purchase price as so increased or decreased.

The Equipment shall be settled for on one or more Closing Dates, fixed, as hereinafter provided, as specified in Item 3 of Schedule A hereto (the Equipment settled for on each such Closing Date being hereinafter called a Group).

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at the office of the Vendor, or at such other place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On each Closing Date with respect to each Group the amount by which (x) the aggregate Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being hereafter

called the Group Invoiced Purchase Prices), plus any prepaid freight, exceeds (y) the sum of \$675,000 and any amount or amounts previously paid or payable with respect to the Group Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) In 5 consecutive equal (except for appropriate adjustment of the final instalment in case the amount of the payment pursuant to this subparagraph (b) shall not, when divided by 5, result in an amount ending in an integral cent) annual instalments, as hereinafter provided, an amount (hereinafter sometimes called the Conditional Sale Indebtedness) equal to the aggregate Purchase Price of all the units of Equipment under this Agreement less the amounts paid or payable in respect thereof pursuant to subparagraph (a) of this paragraph.

The first instalment of the Conditional Sale Indebtedness shall be payable on December 15, 1972, and subsequent instalments shall be payable annually thereafter on December 15 of each year to and including December 15, 1976. The unpaid portion of the Conditional Sale Indebtedness shall bear interest, payable semiannually on June 15 and December 15 of each year commencing June 15, 1972, at the rate of 8% per annum. On June 15, 1972, there shall be payable, in addition to the interest payment provided for in the next preceding sentence, an amount equal to interest in respect of the Conditional Sale Indebtedness in respect of each Group from December 15, 1971 to the Closing Date in respect of such Group calculated at a rate per annum equal to the difference between 8% and the lowest prime rate of interest of Morgan Guaranty Trust Co. in effect as of the close of business on December 15, 1971.

The term "Closing Date" with respect to any Group shall mean such date, not more than ten business days fol-

lowing presentation by the Builder to the Railroad of the invoice for such Group and the Certificates of Acceptance in respect thereof, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 9% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made by the Railroad in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

ARTICLE 5. TAXES. Article 5 of the Model CSA Provisions is herein incorporated as Article 5 hereof.

ARTICLE 6. TITLE TO THE EQUIPMENT. Article 6 of the Model CSA Provisions is herein incorporated as Article 6 hereof.

ARTICLE 7. MARKING OF EQUIPMENT. Article 7 of the Model CSA Provisions is herein incorporated as Article 7 hereof except that the words "Agent, Owner" in the first sentence thereof shall be changed to the word "Owner" and a new paragraph shall be added at the end thereof reading as follows:

"Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation

that might be interpreted as a claim of ownership; *provided, however*, that the Railroad may cause the Equipment to be lettered with the name or initials of the Railroad or in some other appropriate manner for convenience of identification of the interest of the Railroad therein."

ARTICLE 8. LOST, DESTROYED OR DAMAGED EQUIPMENT. In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price, together with interest thereon and all other payments required hereby, the Railroad shall, within ten days after it shall have been determined that such unit suffered a Casualty Occurrence, fully inform the Vendor in regard thereto and, subject to the provisions of the next succeeding sentence, within 30 days after such determination, shall pay to the Vendor a sum equal to the then value of such unit (determined as hereinafter provided). Notwithstanding the foregoing provisions of this paragraph, so long as no event of default under Article 18 hereof shall have occurred and be continuing, the Railroad shall not be required to make any payment in respect of any unit suffering a Casualty Occurrence until the date on which Casualty Occurrences shall have occurred to units of Equipment having an aggregate Purchase Price (or, in the case of replacement units, cost to the Vendor) of 5% or more of the aggregate Group Invoiced Purchase Prices (or, in the case of replacement units, of the cost to the Vendor) of all units of the Equipment delivered hereunder.

For all purposes of this Article 8 the value of each unit suffering a Casualty Occurrence shall be the Purchase Price

of such unit (or, if a replacement unit, the cost thereof to the Vendor) less depreciation at the annual rate (not in excess of 6%) approved by the Interstate Commerce Commission for such unit for each period of 12 calendar months elapsed since the date of delivery and acceptance of such unit to the date of the Casualty Occurrence in respect thereof.

Any money paid to or received by the Vendor pursuant to this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Vendor, to prepay instalments of the Conditional Sale Indebtedness or to or toward the cost of a unit or units of new or remanufactured standard gauge railroad equipment (other than passenger equipment or work equipment of types other than ballast hopper cars) first put into service no earlier than December 15, 1971, to replace such unit or units having suffered a Casualty Occurrence. In case any such money shall be applied to prepay indebtedness, it shall be so applied to instalments thereafter falling due in the inverse order of their maturities, whether or not such amount shall be sufficient to prepay one or more entire instalment or instalments of the Conditional Sale Indebtedness (after payment by the Railroad of all interest then accrued on each such instalment or portion thereof so prepaid, but without premium). In case of replacement, the amount to be applied by the Vendor in respect of any replacement unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of such money was paid to the Vendor and the Railroad shall pay any additional cost of such unit. The amount which any such replacement unit would have cost if acquired on the earliest date when any such money was paid to the Vendor shall be conclusively determined by the certificate of a Vice Presi-

dent or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided.

The Railroad will cause any replacement unit to be marked as provided in Article 7 hereof. Security title to all such replacement units shall be free and clear of liens and encumbrances and shall be taken initially and shall remain in the name of the Vendor, subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the security title of the Vendor to such replacement units.

Whenever the Railroad shall file with the Vendor, pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacement unit of standard gauge railroad equipment, the Railroad shall file therewith executed counterparts of:

- (1) a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than passenger equipment or work equipment of types other than ballast hopper cars) first put into service no earlier than December 15, 1971 and has been marked and numbered as required by the provisions of this Article 8 and certifying the cost of such replacement unit and the amount which such replacement unit would have cost if acquired on the earliest date when any such money was paid to the Vendor; and

- (2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor free and clear of all liens, security interests and encumbrances (other than the rights of the Railroad hereunder), and that such replacement unit has come under and become subject to this Agreement.

So long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, any money paid to the Vendor pursuant to this Article 8, shall, if the Railroad shall in writing so direct, be invested pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated prime or its equivalent by a national credit agency or (iii) certificates of deposit of commercial banks in the United States of America having a capital and surplus aggregating at least \$20,000,000, in each case maturing in not more than five years from the date of such investment (such investments being hereinafter called Investments), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any Investments shall be sold by the Vendor at or about the time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the Purchase Price if such application is requested by the Railroad as hereinabove provided or is otherwise required by the provisions of this Article 8. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds plus such interest shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one of the events of default specified in Article 18 hereof shall have happened and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Article 8 (including for this purpose Investments and interest thereon) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 19 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall upon request of the Railroad, after payment by the Railroad of a sum equal to the value of such Equipment, execute and deliver to the Railroad's vendee, assignee or nominee, such instrument (without warranties) as may be required to release the security title of the Vendor in such Equipment, and to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

ARTICLE 9. MAINTENANCE AND REPAIR. The Railroad will at all times maintain the Equipment in good order and repair at its own expense.

ARTICLE 10. BUILDER'S WARRANTY OF MATERIAL AND WORKMANSHIP. The agreement of the parties relating to the Builder's warranty of material and workmanship is set forth in Item 4 of Schedule A hereto.

ARTICLE 11. COMPLIANCE WITH LAWS AND RULES. Article 11 of the Model CSA Provisions is herein incorporated as Article 11 hereof.

ARTICLE 12. REPORTS AND INSPECTIONS. Article 12 of the Model CSA Provisions is herein incorporated as Article 12 hereof.

ARTICLE 13. POSSESSION AND USE. Article 13 of the Model CSA Provisions is herein incorporated as Article 13 hereof.

ARTICLE 14. PROHIBITION AGAINST LIENS. Article 14 of the Model CSA Provisions is herein incorporated as Article 14 hereof.

ARTICLE 15. RAILROAD'S INDEMNITIES. Article 15 of the Model CSA Provisions is herein incorporated as Article 15 hereof.

ARTICLE 16. PATENT INDEMNITIES. Article 16 of the Model CSA Provisions is herein incorporated as Article 16 hereof.

ARTICLE 17. ASSIGNMENTS. Article 17 of the Model CSA Provisions is herein incorporated as Article 17 hereof.

ARTICLE 18. DEFAULTS. Article 18 of the Model CSA Provisions is herein incorporated as Article 18 hereof.

ARTICLE 19. REMEDIES. Article 19 of the Model CSA Provisions is herein incorporated as Article 19 hereof.

ARTICLE 20. APPLICABLE STATE LAWS. Article 20 of the Model CSA Provisions is herein incorporated as Article 20 hereof.

ARTICLE 21. RECORDING. Article 21 of the Model CSA Provisions is herein incorporated as Article 21 hereof.

ARTICLE 22. PAYMENT OF EXPENSES. Article 22 of the Model CSA Provisions is herein incorporated as Article 22 hereof.

time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or such Investors;

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (d) of this Section 6 and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) An opinion of counsel for the Builder, dated as of such Closing Date, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and

(g) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms

by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, and as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect to such Group. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

AGREEMENT AND ASSIGNMENT dated as of December 15, 1971, between the corporation first named following the testimonium below (hereinafter called the Builder), and THE SAVINGS BANK OF BALTIMORE, a Maryland savings bank with a principal place of business at Charles and Baltimore Streets, Baltimore, Maryland 21203 (said Savings Bank, so acting, being hereinafter called the Assignee).

WHEREAS the Builder and BURLINGTON NORTHERN INC. (hereinafter called the Railroad) have entered into a Conditional Sale Agreement dated as of December 15, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) Witnesseth that, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Whenever this Assignment incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Assignment Provisions" annexed to the Conditional Sale Agreement as Part II of Annex A thereto (hereinafter called the Model Assignment Provisions), such provision of the Model Assignment Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this instrument.

SECTION 2. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 6 hereof;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 17 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereto), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of its indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations referred to or

contained in Article 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder referred to or contained in Articles 2, 3, 4, 5, 15, 16 and 17 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 3. Section 3 of the Model Assignment Provisions is herein incorporated as Section 3 hereof.

SECTION 4. Section 4 of the Model Assignment Provisions is herein incorporated as Section 4 hereof.

SECTION 5. The Builder will cause each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, to be plainly, distinctively, permanently and conspicuously marked with the following legend in letters not less than one inch in height:

"THE SAVINGS BANK OF BALTIMORE, OWNER".

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement

with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) An invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, dated as of such Closing Date, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iii) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such approval is necessary, it has been obtained, and (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia;

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (ii), (iii), (v) and (vi) of subparagraph (d) of this Section 6 and stating that (i) the Railroad is a duly

organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a legal, valid and binding instrument enforceable against the Railroad in accordance with its terms;

(f) An opinion of counsel for the Builder, dated as of such Closing Date, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and

(g) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder

with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, and as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. Section 8 of the Model Assignment Provisions is herein incorporated as Section 8 hereof.

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 10. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of December 15, 1971, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

(f) An opinion of counsel for the Builder, dated as of such Closing Date, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and

(g) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms

by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, and as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect to such Group. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

AGREEMENT AND ASSIGNMENT dated as of December 15, 1971, between the corporation first named following the testimonium below (hereinafter called the Builder), and THE SAVINGS BANK OF BALTIMORE, a Maryland savings bank with a principal place of business at Charles and Baltimore Streets, Baltimore, Maryland 21203 (said Savings Bank, so acting, being hereinafter called the Assignee).

WHEREAS the Builder and BURLINGTON NORTHERN INC. (hereinafter called the Railroad) have entered into a Conditional Sale Agreement dated as of December 15, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) Witnesseth that, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Whenever this Assignment incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Assignment Provisions" annexed to the Conditional Sale Agreement as Part II of Annex A thereto (hereinafter called the Model Assignment Provisions), such provision of the Model Assignment Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this instrument.

SECTION 2. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 6 hereof;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 17 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereto), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of its indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations referred to or

contained in Article 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder referred to or contained in Articles 2, 3, 4, 5, 15, 16 and 17 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 3. Section 3 of the Model Assignment Provisions is herein incorporated as Section 3 hereof.

SECTION 4. Section 4 of the Model Assignment Provisions is herein incorporated as Section 4 hereof.

SECTION 5. The Builder will cause each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, to be plainly, distinctively, permanently and conspicuously marked with the following legend in letters not less than one inch in height:

"THE SAVINGS BANK OF BALTIMORE, OWNER".

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement

with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) An invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, dated as of such Closing Date, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iii) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such approval is necessary, it has been obtained, and (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia;

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (ii), (iii), (v) and (vi) of subparagraph (d) of this Section 6 and stating that (i) the Railroad is a duly

organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a legal, valid and binding instrument enforceable against the Railroad in accordance with its terms;

(f) An opinion of counsel for the Builder, dated as of such Closing Date, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and

(g) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder

with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, and as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. Section 8 of the Model Assignment Provisions is herein incorporated as Section 8 hereof.

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 10. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of December 15, 1971, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Builder and the Assignee have caused this instrument to be executed in their respective corporate names by their respective officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested all as of the date first above written.

BURLINGTON EQUIPMENT
COMPANY,

by W. K. Bush
Vice President

[CORPORATE SEAL]

Attest:

[Signature]
Secretary

THE SAVINGS BANK OF
BALTIMORE,

by [Signature]
President

[CORPORATE SEAL]

Attest:

[Signature]
Secretary

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.:

On this 24 day of January, 1972, before me personally appeared W. K. BUSH, to me personally known, who, being by me duly sworn, says that he is a Vice President of BURLINGTON EQUIPMENT COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... *Michael J. Mulse*
Notary Public
MINNESOTA
My commission expires April 30, 1977

[NOTARIAL SEAL]
My commission expires

STATE OF MARYLAND }
CITY OF BALTIMORE } ss.:

On this 3rd day of JANUARY, 1972, before me personally appeared ROBERT W. THON JR., to me personally known, who, being by me duly sworn, says that he is President of THE SAVINGS BANK OF BALTIMORE, that one of the seals affixed to the foregoing instrument is the corporate seal of said savings bank and that said instrument was signed and sealed on behalf of said savings bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said savings bank.

..... *Edwin Charles Sturtevant*
Notary Public

[NOTARIAL SEAL]
My commission expires



total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 23 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the purchase price

therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 19 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 20. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 21. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

AGREEMENT AND ASSIGNMENT dated as of December 15, 1971, between the corporation first named following the testimonium below (hereinafter called the Builder), and THE SAVINGS BANK OF BALTIMORE, a Maryland savings bank with a principal place of business at Charles and Baltimore Streets, Baltimore, Maryland 21203 (said Savings Bank, so acting, being hereinafter called the Assignee).

WHEREAS the Builder and BURLINGTON NORTHERN INC. (hereinafter called the Railroad) have entered into a Conditional Sale Agreement dated as of December 15, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) Witnesseth that, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Whenever this Assignment incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Assignment Provisions" annexed to the Conditional Sale Agreement as Part II of Annex A thereto (hereinafter called the Model Assignment Provisions), such provision of the Model Assignment Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this instrument.

SECTION 2. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 6 hereof;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 17 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereto), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of its indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations referred to or

contained in Article 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder referred to or contained in Articles 2, 3, 4, 5, 15, 16 and 17 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 3. Section 3 of the Model Assignment Provisions is herein incorporated as Section 3 hereof.

SECTION 4. Section 4 of the Model Assignment Provisions is herein incorporated as Section 4 hereof.

SECTION 5. The Builder will cause each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, to be plainly, distinctively, permanently and conspicuously marked with the following legend in letters not less than one inch in height:

"THE SAVINGS BANK OF BALTIMORE, OWNER".

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement

with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) An invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, dated as of such Closing Date, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iii) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such approval is necessary, it has been obtained, and (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia;

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (ii), (iii), (v) and (vi) of subparagraph (d) of this Section 6 and stating that (i) the Railroad is a duly

time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or such Investors;

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (d) of this Section 6 and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) An opinion of counsel for the Builder, dated as of such Closing Date, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and

(g) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms

by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, and as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect to such Group. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

AGREEMENT AND ASSIGNMENT dated as of December 15, 1971, between the corporation first named following the testimonium below (hereinafter called the Builder), and THE SAVINGS BANK OF BALTIMORE, a Maryland savings bank with a principal place of business at Charles and Baltimore Streets, Baltimore, Maryland 21203 (said Savings Bank, so acting, being hereinafter called the Assignee).

WHEREAS the Builder and BURLINGTON NORTHERN INC. (hereinafter called the Railroad) have entered into a Conditional Sale Agreement dated as of December 15, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) Witnesseth that, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Whenever this Assignment incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Assignment Provisions" annexed to the Conditional Sale Agreement as Part II of Annex A thereto (hereinafter called the Model Assignment Provisions), such provision of the Model Assignment Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this instrument.

SECTION 2. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 6 hereof;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 17 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereto), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of its indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations referred to or

contained in Article 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder referred to or contained in Articles 2, 3, 4, 5, 15, 16 and 17 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 3. Section 3 of the Model Assignment Provisions is herein incorporated as Section 3 hereof.

SECTION 4. Section 4 of the Model Assignment Provisions is herein incorporated as Section 4 hereof.

SECTION 5. The Builder will cause each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, to be plainly, distinctively, permanently and conspicuously marked with the following legend in letters not less than one inch in height:

"THE SAVINGS BANK OF BALTIMORE, OWNER".

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement

with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) An invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, dated as of such Closing Date, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iii) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such approval is necessary, it has been obtained, and (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia;

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (ii), (iii), (v) and (vi) of subparagraph (d) of this Section 6 and stating that (i) the Railroad is a duly

organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a legal, valid and binding instrument enforceable against the Railroad in accordance with its terms;

(f) An opinion of counsel for the Builder, dated as of such Closing Date, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and

(g) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder

with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, and as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. Section 8 of the Model Assignment Provisions is herein incorporated as Section 8 hereof.

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 10. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of December 15, 1971, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Builder and the Assignee have caused this instrument to be executed in their respective corporate names by their respective officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested all as of the date first above written.

BURLINGTON EQUIPMENT
COMPANY,

by W. K. Bush
Vice President

[CORPORATE SEAL]

Attest:

[Signature]
Secretary

THE SAVINGS BANK OF
BALTIMORE,

by Robert W. Thompson
President

[CORPORATE SEAL]

Attest:

[Signature]
Secretary

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.:

On this 24 day of January, 1972, before me personally appeared W. K. BUSH, to me personally known, who, being by me duly sworn, says that he is a Vice President of BURLINGTON EQUIPMENT COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... Michael J. Mulfe
Notary Public
MINNESOTA
My commission expires April 30, 1977

[NOTARIAL SEAL]
My commission expires

STATE OF MARYLAND }
CITY OF BALTIMORE } ss.:

On this 3rd day of JANUARY, 1972, before me personally appeared ROBERT W. THON JR., to me personally known, who, being by me duly sworn, says that he is President of THE SAVINGS BANK OF BALTIMORE, that one of the seals affixed to the foregoing instrument is the corporate seal of said savings bank and that said instrument was signed and sealed on behalf of said savings bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said savings bank.

..... Edwin Charles Sturtevant
Notary Public

[NOTARIAL SEAL]
My commission expires



ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

BURLINGTON NORTHERN INC. hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of December 15, 1971.

BURLINGTON NORTHERN INC.

by 
Vice President